Mr. President, this bill, the Digital Millennium Copyright Act, is one of the most important bills in this whole Congress. It has taken a tremendous amount of effort from all of us to be able to put this together. It is going to make a difference in so many ways—in the protection of copyrighted works, in digital communication and otherwise—throughout the world, that I feel very, very happy to be able to say that this is being enacted into law at this particular point.

I would like to state my agreement with certain important points that Senator LEAHY made in his remarks about Section 1201(k), ''Certain Analog Devices and Certain Technological Measures.'' The Senator emphasized that that section establishes requirements only for analog videocassette recorders, analog videocassette camcorders and professional analog videocassette recorders. It is also my understanding that the intent of the conferees is that these provisions apply only to analog video recording devices.

In addition, because innovation and technological development thrive in unregulated environments, this section should not be misconstrued as providing any impetus or precedent for regulating or otherwise dictating to the computer software industry technological standards. I agree fully with the assessment of the conferees that technology develops best and most rapidly in response to marketplace forces. For these reasons, this section applies to analog technologies only, and it is entirely without prejudice to digital technologies.

Let me just say that I am disappointed that we were not able to include database protection in this bill this year. There are so many people who would like to have that done, on the floor and in the business world and elsewhere, but we were unable to get it done because of objections and because of some dissent. But I would like to put everybody on notice that, shortly after we get back next year, I will file a database protection bill. I believe my colleague from Vermont will join me in this. That, hopefully, will be a bill that everybody can support, because it is absolutely critical that we get this done.

It will be one of the highest orders of priority that we will have on the Senate Judiciary Committee next year. It was one of the things that I feel disappointed we were unable to get done on this particular bill. It just could not be done at this time. I know there are people who are disappointed, but we will get it done next year—we will do everything we can to get it done, and I hope we can call upon industry and everyone else interested in this issue throughout the country to help us in this matter. I hope our colleagues will, because it is very, very important.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Vermont.

Mr. LEAHY. Mr. President, America's founders recognized and valued the creativity of this nation's citizens to such an extent that intellectual property rights are rooted in the Constitution. Article I, Section 8, Clause 8 of the Constitution states that

> The Congress shall have power . . . [t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

The Continental Congress proclaimed,

> Nothing is more properly a man's own than the fruit of his study.''

Protecting intellectual property rights is just as important today as it was when America was a fledgling nation.

It is for this reason I am pleased that the Senate has today passed the Conference Report on the Digital Millennium Copyright Act (DMCA), H.R. 2281.

Title I of the DMCA will implement the two World Intellectual Property Organization (WIPO) copyright treaties. These treaties will fortify intellectual property rights around the world and will help unleash the full potential of America's most creative industries, including the computer software, publishing, movie, recording and other copyrighted industries that are subject to online piracy. By insuring better protection of the creative works available online, the DMCA will also encourage the continued growth of the Internet and the global information infrastructure. It will encourage the ingenuity of the American people, and will send a powerful message to intellectual property pirates that we will not tolerate theft.

I should note that there are provisions in Title I that address certain technologies used to control copying of motion pictures in analog form on video cassette recorders which were not part of either the original Senate or House DMCA bills. These provisions establish certain requirements only for analog videocassette recorders, analog videocassette camcorders and professional analog videocassette recorders. It is my understanding that these provisions do not establish any obligations with respect to digital technologies, including computers or software.

It is also my understanding that the intent of the conferees is that these provisions neither establish, nor should be interpreted as establishing, a precedent for Congress to legislate specific standards or specific technologies to be used as technological protection measures, particularly with respect to computers and software. Generally, Congress should not establish technology specific rules; technology develops best and most rapidly in response to marketplace forces.

Title II of the DMCA will limit the infringement liability of online service providers. This title is intended to preserve incentives for online service providers and copyright owners to cooperate to detect and address copyright infringements that occur in the digital networked environment.

Title III will provide a minor, yet important, clarification in section 117 of the Copyright Act to ensure that the lawful owner or lessee of a computer machine may authorize an independent service provider, a person unaffiliated with either the owner or lessee of the machine, to activate the machine for the sole purpose of servicing its hardware components.

Title IV will begin to update our nation's copyright laws with respect to library, archives, and educational uses of copyrighted works in a digital environment. It includes provisions relating to the Commissioner of Patents and Trademarks and the Register of Copyrights, and clarifies the role of the Copyright Office. It also addresses the assumption of contractual obligations related to the transfer of rights in motion pictures. Finally, this title creates a fair and efficient licensing mechanism to address the complex issues facing copyright owners and users of copyrighted materials as a result of the rapid growth of digital audio services.

Title V, the ''Vessel Hull Design Protection Act,'' creates a new form of sui generis intellectual property protection for vessel hull designs. By adoption of this title, however, the Conferees wisely took no position on the advisability or propriety of adopting broader design protection for other useful articles. Indeed, when broad industrial design legislation was considered by the Congress in the late 1980s and early 1990s, a number of legitimate concerns were raised about the effects such legislation would have, particularly on the cost of auto repairs. Establishing narrow protection for vessel hulls in the conference report should not be interpreted as signaling support, or setting a precedent, for broader design protection that could negatively affect the ability of consumers to obtain economical, quality auto repairs.

The Senate today is passing a balanced and important package. Certain issues that the House had included in the version it passed on August 4, 1998, were eliminated to allow consideration of the rest of the package in a timely manner.

One of the issues dropped was that of database protection. Title V of the House passed DMCA bill created a new federal prohibition against the misappropriation of databases that are the product of substantial investment, with both civil remedies and criminal penalties. The argument for enhanced database protection is that legal rulings and technological developments have eroded protections against database theft. Companies may be able to copy significant portions of established databases and sell them, avoiding the substantial cost of creating and verifying the databases themselves. I appreciate that the threat to U.S. databases has been magnified because database protection laws recently implemented in European Union countries will not be available to U.S. publishers unless comparable legislation is enacted in the U.S.

I have therefore been and continue to be supportive of legislation to provide database producers with adequate protection from database piracy.

I am also sensitive, however, to the concerns about the House-passed database bill that were raised by the Administration, the libraries, certain educational institutions, and the scientific community. The Department of Justice, in a memorandum dated July 28, 1998, concluded that the House passed database bill, H.R. 2652, which was later incorporated in Title V of the House DMCA, raised difficult and novel constitutional questions.

The Department of Commerce has also advised me that while the Administration supports legal protection against commercial misappropriation of collections of information, the Administration has a number of concerns with H.R. 2652, including that the Constitution imposes significant constraints upon Congress' power to enact legislation of this sort.

Just this week, the Department of Commerce told me in a letter that:

> Given the critical importance of implementing the WIPO treaties, and the short time remaining in the Session, we urge the Conferees to focus on issues germane to these treaties, rather than unrelated matters.

Although there was not enough time before the end of this Congress to give this important issue due consideration, it is my hope that the Senate Judiciary Committee will promptly commence hearings on the issue and move expeditiously to enact further legislation on the matter at the beginning of the 106th Congress. The work that the Committee did this year on the issue should be viewed as a beginning, and we are committed to making more progress as quickly as possible.

The legislation that the Senate passed today is the culmination of several years' work, both domestically and internationally, to ensure that the appropriate copyright protections are in place around the world to foster the enormous growth of the Internet and other digital computer networks.

Much of the credit for this legislation is due to the hard work and dedication of the Chairman of the Senate Judiciary Committee, Senator HATCH. This is another example of when we work together, we get good things done. It was also a pleasure to serve on the Conference with Senator THURMOND, former Chairman the Senate Judiciary Committee and a force in his own right.

The Chairman and Ranking Member of the House Judiciary Committee—Chairman HYDE and Congressman CONYERS—and the Chairman and Ranking Member of the Subcommittee on Courts and Intellectual Property—Chairman COBLE and Congressman FRANK—deserve particular recognition and praise for their fine work. Although Congressman FRANK was not on the Conference Committee, his tremendous efforts on behalf of the WIPO implementing language as well as on the other matters in the DMCA are very much appreciated. Congressman GOODLATTE and BERMAN also contributed considerable time and talent to the benefit of all who participated in the process.

Although I had not previously had the pleasure of working on WIPO with the Chairman and Ranking Member of the House Commerce Committee—Chairman BLILEY and Congressman DINGELL—or the Chairman of the Telecommunications, Trade and Consumer Protection Subcommittee, Chairman TAUZIN, I would like to acknowledge their significant contributions to the final package.

The staff of all of the Conferees deserve special recognition. Manus Cooney, Edward Damich, Troy Dow, Garry Malphrus, Mitch Glazier, Debbie Laman, Robert Raben, Bari Schwartz, David Lehman, Ben Cline, Justin Lilley, Andy Levin, Mike O'Rielly, and Whitney Fox spent countless hours on this bill, when it was pending in Committee, on the floor and, finally, in conference. Without their labor and talent, we would not be here today considering the DMCA.

The DMCA also reflects the recommendations and hard work of the Copyright Office. Specifically, Marybeth Peters, Shira Perlmutter, David Carson, Jesse Feder, Carolina Saez, Sayuri Rajapakse, Rachel Goslins and Jule Sigall were invaluable on this legislation. The Copyright Office was there at every step along the way—from the negotiation of the WIPO treaties to the negotiations and the drafting of the implementing legislation and the other issues in the DMCA. Given their expertise in copyright law, they will play a significant role in the implementation of the legislation, particularly with regards to the rulemaking on the circumvention of technological measures that effectively control access to a copyrighted work and the studies mandated by the bill.

The Clinton Administration deserves praise for the role it played in making this legislation a reality. I would especially like to thank Secretary Daley, Andy Pincus, Ellen Bloom, Jennifer Conovitz and Justin Hughes of the Department of Commerce, as well as Brian Kahin and Thomas Kalil for all of their hard work on the DMCA.

From my perspective, those who deserve the most thanks are my Judiciary Committee staff who have assisted me during the hearings, debates, negotiations, and conference on this bill. Bruce Cohen, Beryl Howell and Marla Grossman have worked tirelessly to ensure that this bill was well crafted and lived up to its promise.

This legislation is an important step for protecting American ingenuity and creative expression. It addresses the needs of creators, consumers and commerce in the digital age and well into the next century. I am proud that the Senate has passed this legislation today.

Mr. President, so Senators will know, the distinguished senior Senator from Utah and I spent enormous amounts of time on this piece of legislation working to get us to this point. We both share great concerns about the database part. We understood that we would not be able to get the bill passed had that stayed in the bill.

The distinguished Senator from Utah and I will work between the time we go out and the time we come back in January to put together database legislation. There will be a strong effort, I know, on my side of the aisle, as there will be on his. We hope the Senate will be able to vote on that and the House, too, early next year. I say this because I do not want anybody to think that this has now disappeared because the rest of the legislation has gone through.

With that, I yield the floor.

Mr. DEWINE. Mr. President, I rise today in support of the conference report to implement the WIPO treaties. I also strongly support the copyright term extension legislation that we recently passed by voice vote.

While I would like to congratulate the conferees and their staff for working out a consensus on so many controversial provisions, I feel it is necessary to express my disappointment that we are unable to pass some form of database protection this year. It is unfortunate that a consensus could not be reached on an issue that is so vital to so many people in our country. Agricultural databases, for example, are relied upon by our farmers and by others in our farming supply industry. While computers and the Internet make access to information available at our fingertips, we need to provide adequate protection for those who compile that information in such a user friendly format. Such easy access is essential to health care workers, for example, who need to have fast access to accurate information about which drugs have adverse reactions to other drugs or which antidotes are most effective in counteracting certain poisons.

I see my friend from Utah, Senator HATCH, the chairman of the Judiciary Committee, is on the floor, and I would like to ask if he would agree that Congress should pass database legislation as early as possible next year to ensure that those who invest their time, money and effort in compiling and updating databases are protected from having their work pirated both domestically and internationally? Would the Senator from Utah agree that without such protections, database creators may decide that the risk of loss from piracy outweighs any potential gains from creating or updating databases.

Mr. HATCH. Mr. President, as my colleague well knows, I have facilitated a number of meetings with interested parties from all sides of this issue to try to work out a consensus bill. Obviously more work needs to be done to pass a bill that is acceptable to all sides. This is an important issue, and I